

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 21, 2009 Session

STATE OF TENNESSEE v. RICK L. MUNCIE

**Direct Appeal from the Criminal Court for Wilson County
No. 07-0278 John D. Wootten, Jr., Judge**

No. M2008-02097-CCA-R3-CD - Filed September 23, 2009

The Defendant, Rick L. Muncie, pled guilty to driving under the influence, first offense. He was sentenced to eleven months and twenty-nine days, with ten days to be served in jail. In accordance with Tennessee Rule of Criminal Procedure 37, the Defendant reserved as a certified question of law the issue of whether a police roadblock stop of his vehicle, which led to his indictment and guilty plea, was constitutional. After a thorough review of the record and relevant authorities, we conclude that the stop of the Defendant's vehicle was constitutional, and, therefore, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

James O. Martin, III, Lebanon, Tennessee, for the Appellant, Rick L. Muncie.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Tom P. Thompson, District Attorney General; Robert Hibbett, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the stop of the Defendant's vehicle during a sobriety checkpoint operated by the Lebanon Police Department ("LPD"), which resulted in the Defendant being charged with driving under the influence, first offense. The record reflects that the LPD conducted a sobriety checkpoint on East High Street in Lebanon, Tennessee, on November 24, 2006, between 10:00 p.m. and 3:00 a.m. At this checkpoint, the Defendant's vehicle was stopped, and, observing the Defendant to be intoxicated, LPD officers arrested the Defendant for driving under the influence ("DUI") and performed a blood-alcohol test on the Defendant, which revealed his blood-alcohol

content to be 0.15. The Defendant was indicted for one count of DUI and one count of DUI per se. The Defendant filed a motion to suppress all evidence seized as a result of his stop during the LPD's sobriety checkpoint, which he argued violated his reasonable expectation of privacy, as guaranteed by the U.S. Constitution and the Tennessee Constitution. After a hearing, the trial court denied the Defendant's motion. The Defendant then pled guilty to one count of DUI, reserving as a Rule 37 certified question of law the issue of whether the sobriety checkpoint was constitutional. *See* Tenn. R. Crim. P. 37(b).

I. Suppression Hearing

At the suppression hearing, LPD Lieutenant Brent Willet testified he was patrol division commander at the time of the November 24, 2006, sobriety checkpoint. Lieutenant Willet said that, in his capacity as patrol division commander, he chose the date and location of the sobriety checkpoint. The lieutenant testified that, pursuant to an LPD order governing roadblocks, he was not present during the checkpoint.

The State introduced as an exhibit a copy of the LPD order to which Lieutenant Willet referred. The Lieutenant explained that the order, issued in 2002, was in effect on November 24, 2006, and that he followed it when he organized the sobriety checkpoint at issue. The order recites that its purpose is to establish procedures to operate roadblocks and sobriety checkpoints.

Lieutenant Willet testified that, once he selected the date and location of the sobriety checkpoint, he informed Sergeant Michael Bay of the checkpoint's date and location, and instructed Sergeant Bay to implement the checkpoint. He described Sergeant Bay as the "on-site supervisor" of the checkpoint. The Lieutenant testified that his only further involvement in the November 24 checkpoint consisted of his gaining the police chief's approval of the checkpoint. He emphasized that he was present at no point during the checkpoint. Lieutenant Willet testified that, because Commissioner Billy Weeks informed the press of the checkpoint, the Lebanon Democrat published an article about the likely sobriety checkpoints the LPD would operate during the Thanksgiving Holiday.¹

The State entered a copy of the Lebanon Democrat's article into evidence. The article, entitled "Police on the lookout for drunk drivers during holiday," describes the Tennessee Highway Patrol's efforts to curb drunk driving during the holidays and contains statements from several Middle Tennessee law enforcement officials describing their plans to increase efforts to detect drunk drivers during the Thanksgiving holiday. The article quotes Lebanon Public Safety Commissioner Weeks as having said to a Lebanon Democrat reporter, "We do have some overtime money . . . I would assume that they'll do some sobriety checkpoints and do some extra patrol over the holiday days." The article states that the "2006 Thanksgiving holiday period begins at 6 p.m. on Wednesday, Nov. 22 and runs through midnight Sunday, Nov. 26." The article contains no further information about the potential LPD checkpoints.

¹November 24, 2006, was the Friday after Thanksgiving.

On cross-examination, Lieutenant Willet said he did not recall whether the LPD gave advance notification of the checkpoint beyond that contained in the Lebanon Democrat article. He testified he himself had no role in instructing or supervising the field officers operating the checkpoint, emphasizing his involvement was limited to electing to conduct a sobriety checkpoint, selecting its location and date, issuing advance publicity of the checkpoint, and soliciting field officers' help in implementing the checkpoint. The lieutenant explained he chose the location for the checkpoint based partly on the fact that previous sobriety checkpoints in the same location resulted in several DUI arrests. The Lieutenant said the LPD order set out criteria for a proper checkpoint location, and he acknowledged the checkpoint did not meet all criteria. He testified the location complied with the order's criteria in that it had adequate visibility for oncoming traffic and adequate space to safely detain vehicles.

Lieutenant Willet testified he posted a flyer in the LPD police station that solicited LPD officers to sign up to implement the checkpoint, explaining that, for safety reasons, LPD policy required at least ten officers to conduct a checkpoint. The lieutenant said the flyer contained only the date, not the location, of the checkpoint. The Lieutenant said that, a day or so before the checkpoint, he informs the on-site supervisor of the checkpoint's location.

According to Lieutenant Willet, just before the on-site supervisor leads the field officers from the police station to the checkpoint's location, he briefs them on the guidelines, contained in the LPD order described above, to follow in operating the checkpoint. Lieutenant Willet said that, in this case, on-site supervisor Sergeant Bay briefed the officers and supervised them during the checkpoint. According to Lieutenant Willet, Sergeant Bay made any decisions about the details of the checkpoint's operation that were not pre-determined by the guidelines contained in the LPD order. For example, the lieutenant said Sergeant Bay would have determined how often to stop vehicles, but the guidelines required field officers to place a warning of the checkpoint one hundred feet before the checkpoint. Lieutenant Willet did not know the details of the manner in which Sergeant Bay conducted the checkpoint.

Lieutenant Willet testified he received a report of the checkpoint from Sergeant Bay. The report detailed the checkpoint's start and end time, location, names of participating officers, number of vehicles stopped, number of motorists detained for further testing, number of motorists released after testing, number of DUI arrests, and number of other arrests. He said the Defendant was the only person arrested during the sobriety checkpoint on suspicion of driving under the influence.

Sergeant Bay confirmed he was the on-site supervisor for the LPD's November 24 sobriety checkpoint. He testified that, as on-site supervisor, he did not choose the checkpoint's location but instead was in charge of preparing and setting up the equipment necessary for the checkpoint, such as signs and traffic cones. The sergeant said the LPD order contained many mandatory specifications for the checkpoint's operation, but it left several aspects of the checkpoint to his discretion as on-site supervisor.

According to the sergeant, he and fellow officers placed signs warning approaching motorists

of the checkpoint on either side of the checkpoint, about one hundred feet away. As the checkpoint occurred between 10:00 p.m. and 3:00 a.m., it was already dark outside, so the officers relied on streetlights, patrol car lights trained on the checkpoint, and their personal flashlights for visibility. The sergeant testified that the field officers, who were wearing reflective vests, stopped each vehicle that approached the checkpoint from either side of the checkpoint. He said that, pursuant to the LPD order governing sobriety checkpoints, he only waved cars through the checkpoint when traffic became dramatically congested. Sergeant Bay recalled that, between the warning signs and the checkpoint itself, vehicles had opportunities to turn off of East High Street to avoid the checkpoint. He said he explained to field officers that a motorist's decision to avoid the checkpoint did not constitute reasonable suspicion sufficient to justify stopping that vehicle. Rather, the officers were instructed only to stop the motorists avoiding the checkpoint if the motorist committed a traffic violation. The sergeant did not recall whether officers stopped any motorists who avoided the checkpoint and later committed a traffic violation.

Sergeant Bay testified that LPD order governing sobriety checkpoints does not preclude him, as on-site supervisor, from conducting field sobriety tests and making arrests during checkpoints but that his decision on whether to make arrest depends on "how busy" the checkpoint becomes. The sergeant testified that, because he could not leave the scene of the checkpoint at issue, he determined to not make arrests. Sergeant Bay did, however, participate in several of the vehicle stops that occurred during the checkpoint. Sergeant Bay said that, when a vehicle approached the checkpoint, he along with other officers motioned for the driver to stop and roll down his window. Sergeant Bay said he (or the officer who initiated the stop) then introduced himself, explaining that a sobriety checkpoint was under way, and gave the driver a pamphlet about the dangers of drunk driving. Officers then checked the driver for obvious signs of intoxication, and verified that the driver's license, registration, and insurance were in order.

Although Sergeant Bay acknowledged he stopped several vehicles, checking drivers for signs of intoxication and verifying their license and registration, he denied he participated in the stop and arrest of the Defendant, saying, "I walked over . . . when Patrolman Weeks was giving the test, I walked over for just a minute. I did not participate in the test." The sergeant did not recall the number of drivers to whom he personally issued citations during the checkpoint.

II. Analysis

The Defendant contends that the roadblock pursuant to which police stopped his vehicle was unconstitutional and that, as a result, the stop of his vehicle was unlawful and requires suppression of the evidence supporting his DUI conviction. The State responds that the trial court properly admitted the evidence because the roadblock was constitutional.

A. Certified Question of Law

Because this appeal comes before us as a certified question of law, pursuant to Rule 37(b) of the Tennessee Rules of Criminal Procedure, we must first determine whether the questions August

31, 2009 presented are dispositive. An appeal lies from any judgement of conviction upon a plea of guilty if the defendant entered into a plea agreement under Rule 11(a)(3) but explicitly reserved with the consent of the State and the court the right to appeal a certified question of law that is dispositive of the case. Tenn. R. Crim. Proc. 37(b)(2); *see State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988). Further, the following are prerequisites for an appellate court's consideration of the merits of a question of law certified pursuant to Rule 37(b)(2):

- (i) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, contains a statement of the certified question of law reserved by the defendant for appellate review;
- (ii) The question of law is stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
- (iii) The judgment or document reflects that the certified question was expressly reserved with the consent of the state and the trial judge; and
- (iv) The judgment or document reflects that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case

Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv).

The record shows that these requirements have been met. The judgment of conviction contains a statement of the certified question of law with the judge's signature below:

Plea is pursuant to TRCrP 37(b)(2)(1) as the [D]efendant has preserved a certified question of law for appeal: "whether the roadblock established & operated by the Lebanon Police Dept. in this case (11-24-06) was unlawful in violation of the U.S. Constitution & Article I, Section 7 of the Tenn. Constitution as well as the authority of our Supreme Court in *State v. Downey*, 945 S.W.2d 102 (Tenn. 1997) and *State v. Hicks*, 55 S.W.3d 515 (Tenn. 2001) making the warrantless stop of the defendant's vehicle unlawful & the evidence recovered subject to suppression." In addition, all parties including the State, Defendant and the Trial Judge are in agreement this question is dispositive of the case. Attached agreed order should be incorporated as part of this judgment.

A dispositive certified question of law was expressly reserved for appellate review as part of the plea agreement in this case. The State, the Defendant, and the trial court consented to the reservation of the dispositive certified question of law and each agrees that the issue is dispositive of this case. The dispositive question of law is: whether the roadblock conducted by the LPD complied with the U.S. and Tennessee Constitutions, as interpreted in *State v. Downey*.

The statement clearly identifies the certified question in both scope and legal limits, and it

verifies that the judge and the State both expressly consented to the reservation of the certified question. Also, the statement indicates that the judge, the State, and the Defendant were of the opinion that the certified question was dispositive in the Defendant's case, and we agree. In this case, if the roadblock did not comply with *Downey*, then the stop of the Defendant's vehicle, and all evidence supporting his guilty plea would be excluded. *State v. Troxell*, 78 S.W.3d 866, 870-71 (Tenn. 2002). As such, this issue is dispositive on appeal, and we will address it.

B. Constitutionality of Roadblock

The Defendant argues that the sobriety checkpoint was unconstitutional because, although the LPD established the checkpoint pursuant to predetermined operational guidelines, the guidelines did not adequately limit arbitrary intrusion and officer discretion. The Defendant argues the limits on arbitrary intrusion and officer discretion were inadequate because: (a) insufficient advance publicity preceded the checkpoint; (b) no study or statistics established the appropriateness of the location of the checkpoint; and (c) the supervisor who made the critical decisions about the operation of the checkpoint, Sergeant Bay, was also an active participant in the checkpoint.

The standard of review for a trial court's suppression hearing mandates that its findings of fact "will be upheld unless the evidence preponderates otherwise." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *accord Randolph*, 74 S.W.3d at 333. The prevailing party in the trial court is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Odom*, 928 S.W.2d at 23. Furthermore, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution and conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* However, this court reviews a trial court's application of the law to the facts de novo, without any deference to the determinations of the trial court. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001). The defendant bears the burden of demonstrating that the evidence preponderates against the trial court's findings. *Odom*, 928 S.W.2d at 22-23; *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

Both the United States and Tennessee Constitution protect against unreasonable searches and seizures. The Fourth Amendment of the U.S. Constitution proclaims that "the right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." Article 1, Section 7 of the Tennessee Constitution provides "people shall be secure in their persons, houses, and papers and possessions, from unreasonable searches and seizures." Tenn. Const. art. I, § 7. Generally, to search a person's property, a warrant is needed. *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997). Evidence seized as a result of a warrantless search of a person's property, therefore, "is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997). A trial court accordingly presumes that a warrantless search or seizure is unreasonable unless the State demonstrates that one of the exceptions to the warrant requirement applies to the search. *Id.*

One exception to the warrant requirement is when an officer has reasonable suspicion to believe some criminal action involving a vehicle has occurred. *Terry v. Ohio*, 392 U.S. 1 (1968). An officer may make a brief investigatory stop if the officer has a reasonable suspicion based upon specific and articulable facts that a criminal offense has been, is being, or is about to be committed. *Id.* Seizures conducted pursuant to a police roadblock are also sometimes excepted from the warrant requirement. *See U.S. v. Martinez-Fuerte*, 428 U.S. at 543, 556-57 (1976); *State v. Downey*, 945 S.W.2d 102 (Tenn. 1997). For example, and relevant to the case at hand, the United States Supreme Court has held that, under some circumstances, suspicionless temporary checkpoints to search for drunk drivers are reasonable and, thus, comply with the Fourth Amendment. *See Michigan v. Sitz*, 496 U.S. 444, 450-55 (1990). The Court has explained that the constitutionality of seizures that are less intrusive than traditional arrest, such as a roadblock stop, depends upon “a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with the individual liberty.” *Brown v. Texas*, 443 U.S. 47, 50 (1979). A reasonable balance of these considerations requires that the checkpoint be “based on specific, objective facts indicating that society’s legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.” *Id.*

When our Supreme Court interpreted Article 1, Section 7 of the Tennessee State Constitution in the context of police roadblocks, it adopted the test used in *Brown v. Texas* and *Michigan v. Sitz* to determine whether a police roadblock complied with the Fourth Amendment. *See Downey*, 945 S.W.2d at 110. Therefore, in Tennessee, roadblock seizures, which allow officers to stop persons whose conduct is “ordinary, innocent, and free from suspicion,” are in some instances constitutional. *Id.* at 104. The constitutionality of roadblock seizures, in general, depends upon a balancing of: (1) the gravity of public interest served by the seizure; (2) the degree to which the seizure advances that interest; and (3) the severity of the interference with individual liberty. *Id.* at 110 (citing *Michigan v. Sitz*, 496 U.S. at 453).

In *Downey*, our Supreme Court concluded that sobriety checkpoints, in particular, always satisfy the first two prongs of the *Downey* test because the State has a compelling interest in preventing impaired driving and because sobriety checkpoints effectively detect impaired drivers. *Id.* at 110. The Court, however, explained that the third prong, the severity of the interference with an individual’s liberty, must be analyzed on a case-by-case basis. *Id.* In each case, a court must determine whether the sobriety checkpoint was “established and operated in accordance with predetermined operational guidelines and supervisory authority that minimize the risk of arbitrary intrusion on individuals and limit the discretion of law enforcement officers at the scene.” *Id.* at 104. The State bears the burden of showing that the government roadblock was reasonable. *State v. Hicks*, 55 S.W.3d 515, 527, 535 (Tenn. 2001) (citing *State v. Bartram*, 925 S.W.2d 227, 230 (Tenn. 1996)).

In order for a sobriety checkpoint to have an adequate limit on officer discretion, the “most important” limitation on a sobriety checkpoint: (1) the decision to set up the roadblock in the first

instance must not have been made by the officer or officers actually establishing the roadblock; and (2) the officers on the scene must not have discretion to select the procedures to be used in operating the roadblock. *State v. Hayes*, 188 S.W.3d 505, 516 (Tenn. 2006) (citing *Hicks*, 55 S.W.3d at 533). Therefore, in all cases, the State must show that the field officers' superior officer chose the time and location of the checkpoint and that the field officers operated the checkpoint in accord with "neutral standards previously fixed by administrative decision or regulation." *Id.* Inadequate limitation of field officer discretion necessarily invalidates the checkpoint stop. *Id.*; see also *State v. Sherman Boddie*, No. W2007-00685-CCA-R3-CD, 2007 WL 4322159, *3 (Tenn. Crim. App., Dec. 11, 2007), *no Tenn. R. App. P. 11 application filed*.

If the sobriety checkpoint adequately limits field officer discretion, a court must then determine whether the checkpoint complies with the second requirement of a reasonable roadblock, that the guidelines and supervisory authority properly limit the risk of arbitrary intrusion. *Downey*, 945 S.W.2d at 104. The following factors indicate whether a sobriety checkpoint minimizes the risk of arbitrary intrusion: (a) whether cars traveling in both directions were stopped, unless traffic congestion requires permitting some motorists to pass through; (b) whether adequate safety precautions, such as warning approaching motorists of the roadblock and stopping cars in a safe and visible area, were taken; (c) whether uniformed officers with marked patrol cars with flashing emergency lights conducted the checkpoint; and (d) whether the public received advance publicity of the checkpoint, separate from, and in addition to, any warnings given approaching motorists. *Hicks*, 55 S.W.3d at 533. Not every factor, however, need weigh in favor of the State in order to uphold a roadblock. *Downey*, 945 S.W.2d at 110. In fact, "the absence of any of these factors [that indicate whether the roadblock limited arbitrary intrusion] does not necessarily invalidate a roadblock . . ." *Hicks*, 55 S.W.2d at 533. The chief issue remains whether the sobriety checkpoint was established and operated "in a constitutionally reasonable manner that minimized the intrusion on individuals and limited the discretion afforded to officers at the scene." *Id.*; *Downey*, 945 S.W.2d at 110.

In the case under submission, after hearing the evidence introduced at the suppression hearing, the trial court concluded that the sobriety checkpoint adequately limited officer discretion as well as the risk of arbitrary privacy intrusions. In support of its conclusion that the checkpoint limited the risk of arbitrary intrusion, the trial court made several factual findings: that officers stopped vehicles traveling both directions; that the on-site supervisor, Sergeant Bay, allowed vehicles to bypass the checkpoint when traffic became congested; that field officers used adequate safety measures, such as warning approaching motorists of the checkpoint, stopping cars only in a safe and visible area, outfitting the checkpoint with uniformed officers, marking the checkpoint with flashing lights; that the checkpoint allowed "escape" because officers were instructed to not give chase to motorists who turned around to avoid passing through the checkpoint; and that, although the notice of the checkpoint in the local newspaper omitted the exact date and location of the checkpoint, the advance publicity of the checkpoint was adequate.

In support of its conclusion that the checkpoint adequately limited the field officers' discretion, the trial court found: that Lieutenant Willett, an officer superior to the supervising officer

present during the checkpoint, made “the decision to set up the roadblock in the first instance”; and that the operational guidelines distributed to field officers did not allow field officers to “decide the procedures to be used in operating the roadblock.” The trial court emphasized that supervising officer Sergeant Bay’s presence during the checkpoint, where he allowed cars to bypass the roadblock when traffic became congested, did not indicate field officers’ discretion was inadequately constrained. Rather, the court continued, the sergeant’s actions ensured that the checkpoint minimally intruded upon motorists’ privacy. Having concluded the checkpoint complied with the *Downey* requirements, the trial court denied the Defendant’s motion to suppress the evidence obtained as a result of the LPD’s stop of his vehicle during its sobriety checkpoint.

As mentioned previously, the Defendant appeals the trial court’s conclusion that the checkpoint did not unreasonably intrude upon his constitutional right to privacy, arguing (1) the advance publicity of the checkpoint was inadequate; (2) the checkpoint lacked a basis in a statistical study establishing the need for DUI deterrence at the checkpoint’s location; and (3) the checkpoint inadequately limited supervising officer Sergeant Bay’s discretion in implementing the checkpoint. We address each of the Defendant’s contentions below.

1. Advance Publicity

The Defendant first contends that the LPD did not publish sufficient advance publicity of the stop, because the Lebanon Democrat article neither definitively stated a checkpoint would occur nor included the checkpoint’s exact date or location. The State responds that the information in the article about the checkpoint sufficiently limited the risk of arbitrary intrusion into the motorists’ privacy. Further, the State continues, even if this Court concludes the advance publicity of the checkpoint was deficient, the checkpoint, taken as a whole, was reasonable.

One value of advance publicity of a roadblock is its tendency to show the checkpoint “was established in accordance with supervisory and administrative standards.” *Downey*, 945 S.W.2d at 111 n. 8. Advance publicity is also valuable insofar as it deters motorists from driving under the influence for fear of being apprehended. *Id.* at 109. The Lebanon Democrat article about the checkpoint reported Public Safety Commissioner Weeks announced the LPD would conduct a sobriety checkpoint over the 2006 Thanksgiving holiday weekend, which the article indicated “beg[an] at 6 p.m. on Wednesday, Nov. 22 and r[an] through midnight Sunday, Nov. 26.” In our view, the LPD’s disclosure to the Lebanon Democrat indicates that the checkpoint was planned in advance by an official with supervisory power. As such, it indicates the presence of planning and organization before the checkpoint was implemented. Also, the publication of the checkpoint in a local newspaper likely discouraged motorists from driving under the influence during the Thanksgiving 2006 holiday weekend. In our view, the absence of more exact information about the checkpoint increased the deterrent value of the checkpoint. We conclude the advance publicity of the checkpoint contained in the Lebanon Democrat’s article bolsters the checkpoint’s reasonableness.

2. Data Concerning Site

The Defendant contends the checkpoint's location was improper because no independent study or statistics establishing a high incidence of DUI supported its selection. The State responds that statistical data analysis need not underlie a site selection and that site's selection may be based solely on a supervisor's personal knowledge of the site.

A statistical basis establishing a site's elevated potential to detect impaired drivers would ameliorate the problem of "the questionable effectiveness of an individual roadblock." However, such statistical proof is not necessary to demonstrate the checkpoint "contributes in a meaningful way to achieving the compelling state interest." *Hicks*, 55 S.W.3d at 532. This Court has found a supervising officer's personal knowledge of a location sufficient to support his selection of the location to conduct a checkpoint. *Pate*, 2001 WL 717360, at *7. In this case, Lieutenant Willet chose the checkpoint's location based only on his personal knowledge of previous sobriety checkpoints in the same location that had resulted in several DUI arrests. The lack of empirical data supporting the checkpoint location's potential to deter drunk driving is not fatal in this case. We conclude the lieutenant's experience of having apprehended several intoxicated drivers was a reasonable basis upon which to choose the location.

3. Limits on Officer Discretion

The Defendant argues that the limits on the field officers' discretion were inadequate because the supervisor who made the most critical decisions about the checkpoint also actively participated in the sobriety checkpoint. The State responds Sergeant Bay's actions were not the result of an exercise of his discretion because he followed the LPD's general guidelines.

As explained above, the limits placed on the officers administering a checkpoint are the most important safeguard against a checkpoint's intrusion into motorists' reasonable expectation of privacy. *See Hayes*, 188 S.W.3d at 516. For field officers' discretion to be so limited, a supervising officer not present at the checkpoint must have initiated and set into motion the checkpoint. *Id.* Also, the field officers must not have discretion to choose the procedures used to carry out the checkpoint. *Id.* A field officer should not have the discretion to choose the time and location of the checkpoint, to select which vehicles to stop, or to select the documentation requested of each motorist. *See id.*; *Downey*, 945 S.W.2d at 108. In our view, the prohibition against field officer discretion to choose vehicles to stop requires only that field officers choose a vehicle based not upon its characteristics but rather upon an objective pattern of stopping vehicles. *See id.*

In this case, we first note that the first limitation on officer discretion is met because Lieutenant Willet initiated and planned the checkpoint, and assigned Sergeant Bay the responsibility of implementing the plan. Lieutenant Willet was not present at the checkpoint. *See Hayes*, 188 S.W.3d at 516.

Sergeant Bay, as supervising officer of the checkpoint, chose to stop every car that passed through the checkpoint, and he, at one point, allowed vehicles to pass through the checkpoint in order to relieve traffic congestion. The field officers followed Sergeant Bay's instructions to stop

each car, and they requested each motorist's license, registration, and insurance verification. In our view, Sergeant Bay and his fellow field officers did not have discretion over aspects of the roadblock that affected its constitutionality, which is the discretion *Downey* precludes in a field officer. 945 S.W.2d at 108. The discretion Sergeant Bay exercised in choosing to stop each vehicle and to allow cars to pass when traffic became congested did not affect the objectiveness of the stops, which the limitations of field officer discretion seek to ensure. Further, Sergeant Bay's decision to allow cars to pass through the checkpoint bolstered the checkpoint's reasonableness because it improved the overall safety of the checkpoint. *See Hicks*, 55 S.W.3d at 533. In sum, Sergeant Bay's presence at the checkpoint as on-site supervisor did not affect the checkpoint's constitutionality because he did not possess the discretion *Downey* and its progeny proscribe in a field officer. *Downey*, 945 S.W.2d at 108. Rather, Sergeant Bay's executive decisions were a necessary element of a reasonable implementation of a constitutional checkpoint.

Considering all the circumstances surrounding the sobriety checkpoint, we conclude that the safeguards surrounding the sobriety checkpoint adequately limited officer discretion and minimized the risk of arbitrary intrusion upon motorists' reasonable expectations of privacy. *See Downey*, 945 S.W.2d at 110. As such, we affirm the trial court's denial of the Defendant's motion to suppress. The Defendant is not entitled to relief.

III. Conclusion

After a thorough review of the evidence and relevant authorities, we conclude that the LPD's sobriety checkpoint was constitutional. Accordingly, we affirm the trial court's judgment.

ROBERT W. WEDEMEYER, JUDGE